Supreme Court, U.S.
FILED
DEC 13 2005
OFFICE OF THE CLERK

No. 05-850

In The

SUPREME COURT OF THE UNITED STATES

COREN ESTES,
Petitioner

v.

CARPENTER COMPANY,
JIM GUTHRIE,
JOHNNY MEGUIAR, and
DOUG BULLOCK
Respondents

On Petition For Writ Of Certiorari
From The Kentucky Supreme Court

PETITION FOR WRIT OF CERTIORARI

NANCY OLIVER ROBERTS, P.S.C.
ATTORNEY FOR PETITIONER
NANCY OLIVER ROBERTS LAW FIRM
1023 KENTUCKY STREET
BOWLING GREEN, KENTUCKY 42101
(270) 842-5900 (Admission Pending)

INTRODUCTION

This is an age discrimination case, in which the Petitioner was assaulted on the job once and twice at his residence, by one of the two persons who assaulted him while he was working at the Respondent, Carpenter Company. The Petitioner was not allowed to complete his trial or have his day in Court, due to a Directed Verdict, when the Petitioner had sufficient proof to prove age discrimination. The Trial Judge stopped the trial on the second day, just after the Petitioner testified. The Trial Judge was unconvinced that the Petitioner had evidence connecting Respondent Doug Bullock with the assaults. The Trial Judge demanded that the Petitioner produce Claude Tisdale in less than a half hour, when Claude was already subpoenaed for the following day to testify. The Trial Judge threatened to find the Petitioner in contempt of Court, when the Petitioner was testifying and attempting to describe the events of his death threats and assaults by the Respondent Doug Bullock's henchmen. The Respondent Carpenter Company is the second largest employee in Logan County, Kentucky. Hence, the case became personal with the Trial Judge, when he fined the undersigned for subpoenaing a police officer to a hearing to testify, threatened the undersigned with disbarment, talked loudly before the jury in a very negative manner about the Petitioner's case and the undersigned prior to his judgment for the Defendant/Respondents. The Petitioner was not allowed to tell the truth and the whole truth, when he was sworn, because the Trial Court limited the alleged hearsay statements of the Petitioner's assailants, but the bank teller is

allowed to testify as to what the robber states, when requesting the money.

(a) QUESTIONS PRESENTED:

1. Whether it was clearly erroneous and a lack of due process by the trial judge, Kentucky Court of Appeals, and affirmed by the Kentucky Supreme Court to determine it was harmless error to not admit the statements "You know the drill" and "Go tell Dougie [Respondent Doug Bullock] we have got him," because a directed verdict was issued the second day of trial, but these statement would have assisted in making the connection between Respondent Doug Bullock and the assailants.

2. Whether it was clearly erroneous and a lack of due process for the lower courts to fail to consider the connections between the Respondent Bullock and the assaults and Respondent Carpenter Company and the assaults.

3. Whether the lower courts' decision that the Movant did not prove Age Discrimination, because the Movant did not show adverse employment action, was clearly erroneous and lack of due process, since the Movant proved there was adverse employment action, when the Movant was not paid for his last day of work, when he was not paid for his lunch time, yet the Respondent Bullock was so paid, and when he was assaulted at work by an agent of the Respondent Bullock.

4. Whether it was clearly erroneous and lack of due process to not determine that the directed verdict was an abuse of discretion or clearly erroneous.

5. Whether it was clearly erroneous and lack of due process to not determine the destruction of evidence by the Respondent Carpenter Company was a connection between the Respondent Carpenter Company and the assaults.

(b) List of the Parties:

1. The Petitioner is Coren Estes.

2. The Respondents are Carpenter Company, Jim Guthrie, Johnny Meguiar, and Doug Bullock.

TABLE OF CONTENTS

INTRODUCTION i

QUESTIONS PRESENTED ii

LIST OF THE PARTIES iii

TABLE OF CONTENTS iv

TABLE OF CITED AUTHORITIES vi

CITATIONS OF THIS CASE 1

JURISDICTIONAL STATEMENT 1

DATE OF LAST ORDER 1

STATUTORY JURISDICTION 1

STATUTE INVOLVED 2

STATEMENT OF FACTS 2

REVIEW OF STATE-COURT JUDGMENT 19-20

ARGUMENTS

ARGUMENT I - PETITIONER PROVED THE CONNECTION BETWEEN HIM AND BULLOCK, BUT THE COURTS HAVE IGNORED THE FACTS AND FAILED TO PROVIDE COREN WITH DUE PROCESS 20

ARGUMENT II – TWO ASSAILANT STATEMENTS ARE ADMISSIBLE WHICH PROVES THAT THERE WAS A CONNECTION BETWEEN BULLOCK AND THE ASSAULTS ON COREN AND IT IS A LACK OF DUE PROCESS TO NOT INCLUDE THE STATEMENTS IN THE EVIDENCE 22

ARGUMENT III – COREN COULD PROVE AGE DISCRIMINATION; THEREFORE, IT WAS AN ABUSE

OF DISCRETION AND A LACK OF DUE PROCESS FOR THE JURY NOT TO RECEIVE THE CASE. 23

ARGUMENT IV – COREN COULD PROVE THE CONNECTION BETWEEN THE ASSAULTS AND BULLOCK/CARPENTER; THEREFORE, IT WAS AN ABUSE OF DISCRETION AND A LACK OF DUE PROCESS FOR THE JURY NOT TO RECEIVE THE CASE. 26

ARGUMENT V – THE COURTS NOT ADDRESSING THE ISSUE OF DESTRUCTION OF EVIDENCE WAS AN ABUSE OF DISCRETION AND LACK OF DUE PROCESS .28

PRAY FOR RELIEF. 29

CERTIFICATE OF SERVICE. 30

APPENDIX

SUPREME COURT OF KENTUCKY DECISION. .A-1

KENTUCKY COURT OF APPEALS DECISION . .A-2

TRIAL COURT JUDGMENT FOR DEFENDANTSA-3

ORDER DENYING MOTION TO ALTER, AMEND, VACATE JUDGMENT. A-4

ORDER CONCERNING ADMISSIBILITY OF PROFFERED EVIDENCE A-5

PRE-TRIAL CONFERENCE ORDER. A-6

STATUTE INVOLVED. A-7

TABLE OF CITED AUTHORITIES

Cases

American General Life & Accident Ins. Co. v. Hall, Ky., 74 S. W.3d 688 (2002). 27

Black v. Zaring Homes, Inc., 104 F.3d 822, 856 (6th Cir. 1997).22

Burlington Industries Inc. v. Ellerth, 524 U.S. 742, 118 S.Ct. 2257, 141 L.Ed.2d 633 (1998). 27

Davis v. Graviss, Ky., 672 S.W.2d 933 (1984). 25

Ellinger v. Phillip Morris, Inc., 984 F. Supp. 1043 (W.D. Ky. 1997). 28

Faragher v. City of Boca Raton, 524 U.S. 775, 118 S.Ct. 2275, 141 L.Ed.2d 662 (1998). 27

Goldberg v. Kelly, 397 U.S. 254 (1970). . . .21, 22, 23, 26, 27, 28

Lambert v. Franklin Real Estate Company, Ky. App., 37 S.W. 3d 770, 775 (2000). 23

Lovins v. Napier, Ky., 814 S.W.2d 921, 922 (1991). 24

Mason v. Keltner, Ky. App. 854 S.W.2d 780, 782 (1992). 24

Reeves v. Sanderson Plumbing Products, Inc., 550 U.S. 133, 141, 120 S.Ct. 2097, 2006 (2000). 1, 19, 26

Taylor v. Kennedy, Ky. App., 700 S.W.2d 415, 416 (1985). . . 24

Constitutional Provisions

U.S. Constitution, Amendments V and XIV. 2, 21

Kentucky Constitution § 2. . . . . 2, 21

Statutes

Kentucky Civil Rights Act, KRS 344.040. . . . . 2, 19, 28

Other

CR 50.01(a). 25

Restatement (Second) of the Law of Agency § 219(2)(3)(A.L.I.1957). 27

INTRODUCTION

This is an age discrimination case, in which the Petitioner was assaulted on the job once and twice at his residence, by one of the two persons that assaulted him while he was working at the Respondent, Carpenter Company and the assailants were henchmen for Respondent Doug Bullock.

Citations to the case

Coren Estes v. Carpenter Company, Jim Guthrie, Johnny Meguiar, and Doug Bullock, 2004-SC-1100-D; 2003-CA-000090-MR and 2003-CA-000190-MR; Logan Circuit Court Civil Action Number 00-CI-00341.

JURISDICTIONAL STATEMENT

The Kentucky Supreme Court, Court of Appeals, and Logan Circuit Court decided that Age Discrimination did not exist in this case, which is in conflict with Reeves v. Sanderson Plumbing Products, Inc., 550 U.S. 133, 141, 120 S.Ct. 2097, 2006 (2000).

(i) Date of Last Order.

The Kentucky Supreme Court rendered its Order Denying Discretionary Review on September 14, 2005.

(iii) Date of Order Requesting Rehearing.

The Petitioner did not request a Rehearing before the Kentucky Supreme Court.

(iv) Statutory Jurisdiction.

United States Constitution, Amendments V and XIV; Kentucky Constitution § 2; Kentucky Civil Rights Act, KRS 344.040.

STATUTES INVOLVED:

United States Constitution, Amendments V and XIV; Kentucky Constitution § 2; and Kentucky Civil Rights Act, KRS 344.040 are lengthy and are set out in the Appendix.

STATEMENT OF THE CASE

The Petitioner, Coren Estes (hereinafter referred to as Coren) was the second shift lead man in the bailing department at the Respondent Carpenter Company ("Carpenter"). Respondent Doug Bullock ("Bullock") was the first shift bailing department lead man at Carpenter. Coren was assaulted on August 11, 1999 by two of Bullock's henchmen in the fire break room at Carpenter one day before his scheduled retirement.

Dr. Rick Bennett's testimony. The trial began in this case on October 10, 2002. The afternoon of October 10, 2002 included a portion of Coren's testimony and Dr. Rick Bennett's testimony. Dr. Rick Bennett's testimony was offered to prove that Coren developed premature ventricular contractions in his heart and that these occurred after the first assault based on a reasonable medical probability (TAPE: Bennett; 10-10-02; 4:20:15). Dr. Bennett informed the undersigned that he would say his opinions were based on reasonable medical probability (10-10-02; 9:06:00). At the command of the Trial Court, Coren was forced to not include all the

foundation questions concerning Coren's heart condition and the causes of the heart condition. The Trial Court questioned Dr. Bennett and confused him, since this was Dr. Bennett's first time to testify. The Trial Court intimidated Dr. Bennett. Dr. Bennett stated in his deposition "any relationship to the alleged incidents is that the potential side effects are there, that palpitations and premature beats could have been initiated as a side effect." (Dr. Rick Bennett, dep., p. 39). It was discouraging for Coren and his counsel that the Trial Court had interfered with the medical proof and that the doctor succumb to the pressure from the Trial Court and Respondent's counsel to answer other than what Dr. Bennet had informed the undersigned he would (10-10-02; 4:28:50-4:43:00). Then the Trial Court excluded Dr. Bennett's testimony based on Dr. Bennett's testimony being too speculative (10-10-02; 4:42:29). The Court informed the jury of his decision (10-10-02; 4:42:09). As a result, some of the medical damages regarding Coren's heart treatment were excluded, which was an abuse of discretion. If the Trial Court had allowed the Petitioner's attorney to question Dr. Bennett uninterrupted by the Trial Court,[1] the Petitioner's proof would have been shown. This was a lack of due process and abuse of discretion.

Connection Evidence. On October 11, 2002, the second day of trial, the Trial Court told Coren and his counsel that he must put on proof of the connection of the assault to the Respondents (10-11-

[1] The trial court would not allow the Petitioner's counsel to qualify the expert. The trial court ordered Petitioner's counsel to move to Dr. Bennett's opinions (10-

02; 12:59:56). On October 10 and 11, 2002 Coren testified. Coren testified that he had received numerous death threats from Doug Bullock[2] (10-11-02; 9:18:23). Coren testified that he was assaulted on August 11, 1999 by two (2) men in the Respondent Carpenter Company's fire break room (10-11-02; 9:53:49), on December 19, 2001 at his home by one of the same earlier two (2) men (10-11-02; 1:53:48), and on March 18, 2002 by the same black man that was present on all three (3) occasions (10-11-02; 1:53:55). The one assailant was described by Coren to be black, wore ski mask, wore a Carhart jacket two (2) times, had the same gun each time, had the same purple liquid each time later determined to be doxylamine (the last two times by the Kentucky State Police Lab), had gloves on two (2) times, and Coren could identify his voice each time (10-11-02; 10:43:50). Respondent Bullock was the only one that gave Coren problems at work (10-11-02; 1:51:44). Carpenter was responsible

---

11-02; 4:42:29), which confused Dr. Bennett. This was an abuse of Trial Court's discretion.

[2] "You need to be dead" was on Coren's tow motor in July 1998, when Coren changed shift and was hooking up the tow motor. Coren complained to Lloyd Bradley, his supervisor. On May 24, 1999, Coren received a telephone call while he was at home, in which he recognized the voice of Respondent Bullock saying "you will never retire" and the telephone number was 726-2431, a Carpenter telephone number. Coren received a letter in the spring of 1999 from Doug Bullock, because Coren recognized the Doug Bullock's hand-writing that stated "If we could but rid the world of those that think they're so good." Coren complained about the letter to Lloyd Bradley, Glenn Porter, Jim Guthrie, and Sheriff Wallace Whittaker. All the above death threats occurred on or from Carpenter property during Coren's work hours.